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Attorneys for Plaintiff **STEFFON BARBER**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEFFON BARBER,)	Case No. 5:22-cv-00625-KK-DTB
)	
<i>Plaintiff,</i>)	PLAINTIFF'S OPPOSITION TO
)	DEFENDANTS' MOTION IN
vs.)	LIMINE NO. 4 TO EXCLUDE
)	PLAINTIFF'S EXPERT DR.
COUNTY OF SAN)	BENNET OMALU
BERNARDINO, and DEPUTY)	
CHRISTOPHER ALFRED,)	
)	
<i>Defendants.</i>)	
_____)	

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY

Defendants' *motion in limine* to exclude Plaintiff's expert Dr. Bennet Omalu is meritless and represents an improper attempt to prevent the jury from hearing critical testimony regarding the devastating and permanent injuries Mr. Barber sustained in the incident relating to the cause of action before this court. Defendants seek to exclude all testimony from Plaintiff's expert Dr. Bennet Omalu. This request is based on an overbroad interpretation of Dr. Omalu's expected testimony and conflates both the scope and foundation of his opinions.

Dr. Bennet Omalu is one of the most exceptionally qualified forensic pathologists and neuropathologists in the United States, possessing credentials, expertise, and experience that unquestionably satisfy the Daubert requirements for expert testimony under Federal Rule of Evidence 702. His opinions in this case are based on comprehensive review of extensive medical records, in-person clinical examination of Mr. Barber, and application of well-established, peer-reviewed medical methodologies. Most importantly, Dr. Omalu's differential diagnosis methodology, a well-recognized method in his field, is grounded in sufficient facts and data, has been subjected to extensive peer review and publication, and has gained universal acceptance in the medical and forensic pathology communities.

II. LEGAL STANDARD

The Federal rules of Evidence states, "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that; (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of

1 reliable principles and methods; and (4) the expert's opinion reflects a reliable
2 application of the principles and methods to the facts of the case. Fed. R. Evid. 702.

3 Under the *Daubert* standard, the trial court serves as gatekeeper to ensure that
4 expert testimony is both relevant and reliable. In assessing reliability, the court
5 considers whether the expert's theory or technique can be and has been tested;
6 whether it has been subjected to peer review and publication; the known or potential
7 rate of error and the existence and maintenance of standards controlling the
8 technique's operation; and the degree of general acceptance within the pertinent
9 scientific community. Daubert v. Merrell Dow Pharm., Inc., 43 F.3d 1311 (9th Cir.
10 1995)

11 Additionally, the ultimate decision regarding the admissibility of expert
12 witness testimony is determined by the court and is not restricted to the *Daubert*
13 factors. “*Daubert*’s general holding--setting forth the trial judge’s general
14 ‘gatekeeping’ obligation--applies not only to testimony based on ‘scientific’
15 knowledge, but also to testimony based on ‘technical’ and ‘other specialized’
16 knowledge. A trial court *may* consider one or more of the more specific factors
17 that *Daubert* mentioned when doing so will help determine that testimony’s
18 reliability. But, ... the test of reliability is ‘flexible,’ and *Daubert*’s list of specific
19 factors neither necessarily nor exclusively applies to all experts or in every case.”
20 *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999). The court has discretion
21 to include or exclude expert testimony based on its own findings of reliability.

22 Under Federal Rule Evidence 703 an expert may rely on hearsay. Section 703
23 provides, “An expert may base an opinion on facts or data in the case that the expert
24 has been made aware of or personally observed. If experts in the particular field
25 would reasonably rely on those kinds of facts or data in forming an opinion on the
26 subject, they need not be admissible for the opinion to be admitted. But if the facts or
27 data would otherwise be inadmissible, the proponent of the opinion may disclose
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1 them to the jury only if their probative value in helping the jury evaluate the opinion
2 substantially outweighs their prejudicial effect.” Fed. R. Evid. 703

3 **III. ANALYSIS**

4 **A. DR. OMALU IS EXCEPTIONALLY QUALIFIED TO TESTIFY.**

5 Dr. Omalu holds four separate board certifications from the American Board
6 of Pathology: Anatomic Pathology; Clinical Pathology; Forensic Pathology; and
7 Neuropathology. He also holds a fifth board certification in Medical Management
8 as a Certified Physician Executive from the American College of Physician
9 Executives. Additionally, Dr. Omalu completed residency training in Anatomic and
10 Clinical Pathology at the College of Physicians and Surgeons of Columbia
11 University, Harlem Hospital Center; fellowship training in Forensic Pathology at the
12 Allegheny County Coroner's Office, University of Pittsburgh; and fellowship
13 training in Neuropathology at the University of Pittsburgh Medical Center. Further,
14 Dr. Omalu holds a Master of Public Health (MPH) in Epidemiology from the
15 Graduate School of Public Health at the University of Pittsburgh and a Master of
16 Business Administration from the Tepper School of Business at Carnegie Mellon
17 University. His epidemiology training is directly relevant to his opinions in this case
18 regarding the long-term outcomes of traumatic brain injury. He earned his Bachelor
19 of Medicine and Bachelor of Surgery (M.B., B.S.) from the University of Nigeria
20 (June 1990) and holds unrestricted medical licenses in California, as well as
21 previously in Pennsylvania, Indiana, and Hawaii.

22 Dr. Omalu has been involved in several death and injury investigations during
23 his 25-year career as a Forensic Pathologist and Neuropathologist. He has personally
24 conducted over 13,000 autopsies and death investigations and has examined over
25 15,000 brain tissue specimens. Critically, he routinely evaluates living victims of all
26 types of injuries and trauma, including victims of assault, traumatic falls, industrial
27 and accidental injuries, medical complications, and sports-related injuries,

1 performing trauma pattern analysis to determine causes and mechanisms of injury.
2 He currently serves as Clinical Professor of Medical Pathology and Laboratory
3 Medicine at the University of California, Davis and President and Medical Director
4 of Bennet Omalu Pathology, Inc. His previous positions include Chief Medical
5 Examiner for San Joaquin County, California; Co-Director of the Brain Injury
6 Research Institute at West Virginia University/NorthShore University Health
7 System; Member of the NFL Players Association Concussion and Traumatic Brain
8 Injury Committee; and member of the Traumatic Brain Injury Advisory Board of the
9 State of California.

10 Clearly, Dr. Omalu meets the Daubert threshold and Federal Rules of
11 Evidence 702 standard to qualify as an expert.

12 **B. DR. OMALU'S OPINIONS ARE BASED ON RELIABLE**
13 **METHODOLOGY AND ADEQUATE FOUNDATION**

14 Dr. Omalu explicitly stated that he applied "a valid differential diagnosis
15 method including but not limited to causation criteria analysis, Central Limit
16 Theorem analysis and Clinico-Pathologic Correlation analysis" to form his opinions
17 in this case. As he explained, "The differential diagnosis method is a very well
18 established and generally accepted methodology in the medical sciences and is
19 common knowledge for the determination of disease outcomes." This methodology
20 has gained universal acceptance in medicine and is routinely employed by
21 physicians across all specialties to diagnose diseases, determine causation, and
22 predict outcomes. The differential diagnosis methodology involves: (1) reviewing
23 the patient's comprehensive medical history, social history, educational history, and
24 occupational history; (2) documenting the pattern of trauma and injuries sustained;
25 (3) performing physical examination and systems review; (4) analyzing diagnostic
26 imaging, laboratory results, and clinical findings; (5) applying established medical
27 principles regarding injury mechanisms and outcomes; (6) ruling out alternative
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1 causes; and (7) determining causation and prognosis based on the totality of evidence
2 and published medical literature. Dr. Omalu applied the Bradford Hill Criteria, a
3 recognized framework for determining causation in epidemiology, to analyze the
4 contributory and causal risk factors for TBI and traumatic encephalopathy. This
5 rigorous, evidence-based approach demonstrates reliability under Daubert. Courts
6 have repeatedly recognized differential diagnosis as a reliable methodology for
7 determining medical causation, and the reliability of Dr. Omalu's methodology is
8 demonstrated by its widespread use throughout medicine—every physician employs
9 differential diagnosis when evaluating patients, as it is the fundamental analytical
10 framework of medical practice.

11 **C. DR. OMALU'S OPINIONS ARE NOT SPECULATIVE AND**
12 **ARE BASED ON SUFFICIENT EVIDENCE**

13 Here, Dr. Omalu formed an opinion regarding body positioning at the time of
14 the shooting. His opinion is based on the objective anatomic location of the entrance
15 wound in the top of the head as documented in medical records and observed during
16 his examination. A bullet wound in this location, according to forensic pathology
17 principles, indicates the gun was positioned above Mr. Barber's head when fired,
18 consistent with him sitting in a vehicle. Dr. Omalu's opinions are not speculative
19 because they represent the reliable application of established medical principles and
20 published epidemiological research to the documented facts of Mr. Barber's case.

21 Moreover, his opinion regarding the nature and extent of brain injury is based
22 on the CT imaging showing bullet trajectory through brain tissue, the surgical
23 operative notes documenting "herniating liquified brain tissue" and "necrotic brain
24 tissue," and established medical knowledge that high-velocity projectiles (greater
25 than 1,200 feet per second) transfer large amounts of kinetic energy causing both
26 focal and diffuse traumatic brain injury. His prognosis opinions regarding increased
27 dementia risk are grounded in published peer-reviewed epidemiological studies from
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1 leading medical journals showing that severe TBI is associated with a hazard ratio
2 of 11.4 for young-onset dementia, with the strongest association in patients who, like
3 Mr. Barber, sustained severe TBI at a younger age. While forming his opinion, Dr.
4 Omalu cited over 114 peer-reviewed scientific references supporting his analysis
5 and stated his opinions to a reasonable degree of medical and scientific certainty.

6 Additionally, each opinion flows logically from the documented evidence
7 through application of the differential diagnosis methodology—the universally
8 accepted medical framework for determining causation and prognosis. There is no
9 analytical gap between the data Dr. Omalu reviewed and his conclusions; rather, his
10 testimony represents exactly the type of reliable expert analysis contemplated by
11 Daubert and Rule 702.

12 **D. THE COURT SHOULD DENY DEFENDANTS' REQUEST TO**
13 **EXCLUDE DR. OMALU'S TESTIMONY IN ITS ENTIRETY**

14 While Defendants may argue that Dr. Omalu lacks specific credentials as a
15 "bullet trajectory analyst" or "shooting incident reconstructionist," this objection
16 misunderstands and misstates the nature of his testimony. Dr. Omalu does not opine
17 as a ballistics engineer or firearm expert, rather, he opines as a forensic pathologist
18 regarding the anatomical location and trajectory of the wound through the body.
19 Determining body positioning and wound trajectory based on entrance and exit
20 wounds, tissue damage patterns, and anatomical pathology is core forensic
21 pathology expertise.

22 As Dr. Omalu explained, "The patterns of injuries generated by gunshots,
23 firearms and ballistics weapons, and the mechanisms of generation, causation, and
24 sustenance of these patterns of injuries are very well-established in the medical
25 literature and are common knowledge." Forensic pathologists routinely determine
26 wound trajectories, body positioning, and mechanisms of injury based on anatomical
27 analysis—this is fundamental to forensic pathology practice. Dr. Omalu's over
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1 13,000 autopsies and 15,000 injury investigations provide extensive practical
2 experience analyzing gunshot wounds and determining trajectories based on
3 anatomical evidence.

4 Moreover, Dr. Omalu does not claim that trajectory analysis is a specialized
5 skill requiring separate certification, rather, he identifies it as applying "common
6 knowledge" and "generally accepted principles" of forensic pathology to the
7 anatomical evidence. His humility regarding the level of specialization required does
8 not undermine his qualifications; rather, it demonstrates his accurate understanding
9 that anatomical trajectory analysis is a routine component of forensic pathology
10 practice.

11 **E. DR. OMALU'S OPINIONS WILL ASSIST THE TRIER OF**
12 **FACT AND ARE WITHIN HIS AREA OF EXPERTISE**

13 Dr. Omalu's testimony will assist the jury in understanding highly technical
14 medical and scientific matters that are plainly beyond the common knowledge of lay
15 jurors. The jury cannot independently interpret the CT imaging showing "gunshot
16 wound to the right parietal vertex with comminuted fracture and bullet/bone
17 fragments tracking centrally into the brain, bilateral parietal subarachnoid
18 hemorrhage, and subdural hemorrhage along the falx and right tentorium." Lay
19 jurors do not possess the specialized anatomical knowledge to understand what these
20 findings mean in terms of the severity of brain injury, the mechanism by which high-
21 velocity projectiles cause structural brain damage, or the distinction between focal
22 and diffuse traumatic brain injury. Dr. Omalu's testimony will explain the
23 pathophysiology of penetrating gunshot wounds to the brain, including how a bullet
24 traveling at over 1,200 feet per second transfers kinetic energy into the enclosed
25 cranial space causing a severe brain effects, why the human brain as a "post-mitotic
26 organ" cannot regenerate following significant injury, and why Mr. Barber's
27 documented brain damage is permanent and irreversible. Similarly, lay jurors cannot
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1 understand from medical records alone why the anatomic location of the entrance
2 wound in the top of the head indicates Mr. Barber's body positioning at the time of
3 the shooting—this requires forensic pathology expertise in wound trajectory analysis
4 and understanding the relationship between bullet entry angles and body positioning.
5 These are precisely the types of specialized medical questions for which expert
6 testimony is not only appropriate but essential to ensure the jury can properly
7 evaluate the nature and extent of Mr. Barber's injuries.

8 Furthermore, Dr. Omalu's testimony will assist the jury in understanding the
9 long-term medical consequences and prognosis of severe traumatic brain injury—
10 matters that require specialized knowledge of epidemiology, neuropathology, and
11 the mechanisms of neurodegenerative disease. Lay jurors cannot independently
12 assess the medical significance of epidemiological studies for developing dementia
13 and Alzheimer's disease following moderate and severe TBI, or understand that
14 severe TBI at age 35 is associated with young-onset dementia. Dr. Omalu will
15 explain why Mr. Barber's specific injury pattern—severe TBI with documented
16 structural brain damage requiring surgical debridement of necrotic brain tissue,
17 resulting in permanent hemiplegia and wheelchair dependence—places him at
18 substantially elevated risk for progressive neurodegenerative disease as he ages.
19 Without Dr. Omalu's testimony, the jury would have no framework for
20 understanding how a single traumatic event causing permanent brain injury in 2021
21 will manifest as progressive neurological deterioration decades later, why Mr.
22 Barber faces approximately 24.3 years of life lost compared to the general
23 population, or the medical distinction between the acute injuries documented at
24 Arrowhead Regional Medical Center and the chronic traumatic encephalopathy that
25 will worsen over time. Dr. Omalu's specialized knowledge in neuropathology,
26 forensic pathology, and epidemiology provides the essential medical context that
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1 allows the jury to fully comprehend the devastating lifelong impact of Mr. Barber's
2 injuries.

3 **IV. CONCLUSION**

4 For the reasons stated above, Defendants have failed to meet their burden of
5 demonstrating that Dr. Omalu's expert testimony should be excluded. Excluding Dr.
6 Omalu's testimony would prejudice Plaintiff by depriving the jury of critical
7 information necessary to fairly assess the devastating and lifelong impact of
8 Defendants' actions. Dr. Omalu's testimony satisfies Federal Rule of Evidence 702's
9 requirement that expert testimony assist the trier of fact in understanding the
10 evidence and determining facts in issue.

11 Accordingly, the Court should deny Defendants' Motion in Limine No. 4 to
12 Exclude Plaintiff's Expert Dr. Omalu.

13
14 Dated: December 18, 2025 **IVIE McNEILL WYATT PURCELL & DIGGS**

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